

The 9th December, 1985

No. 9/5/84-6Lab/10093.—In pursuance of the provisions of Section 17 of the Industrial Disputes Act, 1947 (Central Act No. XIV of 1947), the Governor of Haryana is pleased to publish the following award of Presiding Officer, Labour Court, Faridabad in respect of the dispute between the Workman and the management of M/s. K.G. Khosla Compressures Ltd., Mathura Road, Faridabad :—

IN THE COURT OF SHRI R.N. SINGAL, PRESIDING OFFICER, LABOUR COURT
FARJDABAD

Reference No. 298 of 1984

between

SHRI MANI RAM, WORKMAN AND THE RESPONDENT-MANAGEMENT OF M/S. K.G. KHOSLA
COMPRESSURES LTD., MATHURA ROAD, FARIDABAD

Present:—

Shri Manohar Lal for the workman.

Shri J.S. Saroha along with Shri P.N. Devedi for the respondent-management.

AWARD

This industrial dispute between the workman Shri Mani Ram and the respondent-management of M/s K.G. Khosla Compressures Ltd., Mathura Road, Faridabad has been referred by the Hon'ble Governor of Haryana,—*vide* his order No. ID/FD/121/84/30627—32, dated 14th August, 1984 under Section 10(i)(c) of the Industrial Disputes Act, 1947 for adjudication. The terms of the reference are :—

Whether the termination of services of Shri Mani Ram was justified and in order ? If not, to what relief is he entitled ?

According to the demand notice the workman was appointed 10 years back as Assistant Fitter. *The previous union was in collusion with the management. Hence the workmen formed a new union of all K.G. Khosla Employees Union and the claimant was active member of the union. They demanded a meeting for solution of problems and out of vengeance he was given charge-sheet on 11th February, 1984 which was duly replied. On 13th February, 1984, Shri V.K. Diwan was appointed as Enquiry Officer. The enquiry was not conducted in the factory premises, rather it was conducted in the management house, Loxhi Road, Delhi. The workman gave a letter to change the venue of enquiry but the management did not care for it. None of letters was considered by the enquiry officer. The report of the enquiry was not given to him. Hence the workman was dismissed without any show-cause notice. The workman has prayed for reinstatement with continuity of service and with full back wages.

The claim of the workman has been contested by the management. It is admitted that the workman was appointed on 1st July, 1975 as helper. It is further alleged that the management has been generous to meet the general demands of the workmen. It is further alleged that the union activities of the workmen have nothing to do with the enquiry. The workman was suspended on 28th January, 1984 and charges against the workman were of serious nature viz. instigating and organising illegal strike, abusing, threatening officers, physically stopping machines, sabotaging machinery, stopping wages and electric supply etc. The explanation offered by the workman was not found satisfactory and hence Shri V.K. Diwan was appointed enquiry officer. In spite of advance notices the workman did not participate in the enquiry with one pretext or the other. The enquiry was adjourned, but again the workman did not participate. The enquiry officer was left with no alternative but to proceed *ex parte* on 28th February, 1984. The workman was offered all reasonable facilities. In the factory premises the situation was tense. Hence it was suitable to hold enquiry at Delhi. The workman and his representative was offered to and fare from the factory to the place of enquiry. It is further alleged that the enquiry report was based on the evidence recorded. The charges proved were of serious nature. Hence it was considered detrimental to retain the workman in service. Hence he was dismissed. Objection is taken that he is gainfully employed.

The rejoinder has been filed by the workman, in which he denied the averments of the written statement. The reference was contested on the following issues :—

- (1) Whether the domestic enquiry is fair and proper ?
- (2) Whether the claimant is gainfully employed ?
- (3) As per reference ?

I have heard the representatives of both the parties and gone through the evidence on record. I have also gone through the statement of Shri R.C. Batra and Shri V.K. Diwan and also statement of the workman, who has appeared as WW-1 and have gone through the enquiry file and evidence recorded therein. My findings on the above issues *seriatim* are as follows :—

Issue No. 1 :

The first objection of the workman is that he was not allowed to be represented by a person of his choice. He had requested the management to be represented through Shri R.D. Yadav, Legal Secretary and Shri Nagar Singh, Advocate, office-bearers of Hind Mazdoor Sabha. Hence he was denied the opportunity to defend himself. This contention of the workman has been contested by the authorised representative of the management. It is contended that under rule 21-A of the Standing Orders, Ex. M-22 the workman had the right to be represented by a co-workman of his choice. The relevant portion reads as follows :—

“During the course of such enquiry proceedings the workman shall have the right to get assistance of any co-worker of his own choice of this establishment. Duly signed copy of the proceedings of the enquiry will be made available to the workman ordinarily every day after such enquiry.”

There is no negative provision in the rules that the workman will not be allowed to be represented by a legal practitioner and legally trained mind. Hence the representative of the workman has contended that the workman should have been allowed to be represented by Shri R.D. Yadav and Shri Nagar Singh, Advocate. He has relied on the judgement of Hon'ble Supreme Court in the *Board of Trustee versus Dalip Kumar AIR-1983-Page 109*. In the case cited above the workman was not allowed to be represented by a legal practitioner, whereas the management appointed two legal advisers as presenting officers. Under rule 12(a) “the employee may take the assistance of any other employee or if the employee is class III or IV employee or an office-bearer as defined in clause (d) of Section 2 of the Trade Union Act, 1926 of the union to which he belongs to present the case on his behalf, but may not engage a legal practitioner for the purpose unless the said Presenting Officer appointed by the disciplinary authority is a legal practitioner or the disciplinary authority, having regard to the circumstances of the case, so permits.”

In view of the above discussions, it was held that the employer was represented by two legally trained minds. Hence the workman was denied fair opportunity to defend himself as he was not allowed to engage a legal practitioner. The following paragraph No. 11 of the above-said judgement is relevant to the facts of the present case :—

“We are faced with the situation where when the enquiry commenced, the rules neither provided for permitting the delinquent employee to be represented by an advocate nor an embargo was placed on such appearance. The rules were silent on this point. But the chairman of the appellant while rejecting the request of the first respondent seeking permission to appear through a legal practitioner simultaneously appointed M/s. R.K. Shetty and A.B. Chaudhary, legal advisor and Junior Assistant Legal advisor, respectively in the employment of the appellant as Presenting cum-Prosecuting Officers. What does this signify ? The normal inference is that according to the Chairman of the appellant the issues that would arise in the enquiry were such complex issues involving intricate legal propositions that the Enquiry Officer would need the assistance of Presenting-cum-Prosecuting Officers and look at the array of law officers of the appellant appointed for this purpose. Now examine the approach of the chairman. While he directed two of his law officers to conduct the enquiry as prosecutors, he simultaneously proceeds to deny such legal representation to the delinquent employee, when he declined the permission to the first respondent to appear through a legal practitioner. Does this disclose a fair attitude or fair play in action ? Can one imagine how the scales were weighted and thereby tilted in favour of the prosecuting officer. In the enquiry the employer would be represented by two legally trained minds at the cost of the port trust while the first respondent was asked either to defend for himself in person or have the assistance of another employee such as Nidkarni who is not shown to be a legally trained person but the delinquent employee cannot engage legal practitioner at his cost.”

It was further held that :—

“Apart from general propositions in the facts of this case, this enquiry would be a one sided enquiry weighted against the delinquent officer and would result in denial of reasonable opportunity to defend himself.”

The facts of the present case are different. In this case the management was represented by Shri S.K. Gogia, an Engineer of the respondent. He was not a legally trained person. Hence the management was also not represented by legally trained persons. Hence the workman could also not be allowed to be represented by a legal practitioner or a legally trained person. No rule of natural justice was flouted if the workman was not allowed to be represented by legally trained minds. It is further contended that the enquiry officer was an advocate. Hence the workman

should be allowed to be represented by an advocate. He was not able to give citation in support of his contention that if the enquiry officer is a legally trained person in this case the workman could be represented by legally trained person. The certified standing orders of the company had the force of law. There is no provisions for allowing the workman to be represented by a legally trained person. The management was not represented by a legally trained person. Hence no injustice was done with the workman.

The second condition of the representative of the workman is that the place of the enquiry was fixed at Management House, Lodhi Road, Delhi and the workman had written that there was danger to his life and enquiry be fixed in the factory premises at Faridabad. It is alleged that the respondent factory is situated in Haryana near Delhi. The place of enquiry is about 10/15 K.M. from the factory and the management allowed to and fro bus fare to the workman and his representative and these facts are not disputed. Hence it cannot be said that the enquiry could not be held at management house, Lodhi Road, Delhi, when the situation in the factory was tense. There is no ground to believe that the workman apprehended danger to his life while going and coming to the place of enquiry, rather if the enquiry is held at place other than the factory it is a circumstance which is favourable to the workman. It has been held by the Hon'ble Supreme Court in judgement of Board of Trustees cited above that one has to consider the nature of enquiry, who held it, where it is held and what is the atmosphere? Domestic enquiry is claimed to be a managerial function. A man of the establishment dons the robe of a judge. It is held in the establishment office or a part of it. Can it even be compared to the adjudication by an impartial arbitrator or a court presided over by an unbiased judge? In the present case both the circumstances were favourable to the workman. The enquiry officer was not a man of the management, the enquiry was held in the place other than the factory. Hence the atmosphere was more favourable but the workman was adamant not to participate in the enquiry, which shows his hostile attitude and adamant behaviour. Had he attended the enquiry proceedings and faced difficulties he would have placed these before the enquiry officer and if these objections would not have been meted out by the enquiry officer, only then it could be said that the enquiry was not held in proper atmosphere and no opportunity was given to the workman. By absenting from the proceedings he showed that his behaviour was non-cooperative and defiant. In *Lakshman Shastri versus State of Bihar* 1969-I-LLJ page 444, the enquiry was held in a school about 8 miles away from the spot. It was held that rules of natural justice do not require that the enquiry against a person should be held on the spot. In these circumstances, I find that by fixing the place of enquiry at Delhi it cannot be said that any prejudice was caused to the workman.

Next contention of the authorised representative of the workman is that an advocate was appointed an enquiry officer, it has prejudiced the workman. It has been held by the Supreme Court in *D.D. Cement versus Murari Lal*, 1971-LIC page 2, S.C. that merely because the enquiry officer was a junior advocate and that he had on occasions been engaged by the management he would not be necessarily biased against the workman. In the present case even there is no evidence that Shri V.K. Dewan has been engaged by the management on certain occasions. Hence the appointment of the enquiry officer could not be said to be circumstances unfavourable to the delinquent workman.

Next contention of the representative of the workman is that the workman has been victimised due to his union activities. It has been held by the Hon'ble Supreme Court in *Bharat Iron Works versus Bhaghu Bhai and Others* : 1976-LIC page 5 that the victimization is a serious charge by employee against employer which must be properly and adequately pleaded giving all particulars. The fact that there is a union and legitimate trade union activities and employee is a member of trade union or active office-bearer is not sufficient to establish victimisation". In the present case, there is no evidence that the workman has been victimised due to his union activities. It is contended that the workman was proceeded *ex parte* and the enquiry was concluded in a short time. It shows that he was victimised. It is admitted that the workman was duly informed the date of enquiry. He did not appear. Hence he was rightly proceeded *ex parte*. It is held by the Hon'ble Supreme Court in *Brook Bond Company India Ltd. versus Subrahman*; 1961 II-LLJ-page 417 that where the workmen insist that they must be allowed to be represented by their counsel and on the refusal of the same they boycotted the enquiry. Such enquiry could be held *ex parte*. So in the present case, the claimant boycotted the enquiry and he was rightly proceeded against *ex parte*. If the enquiry officer concluded the enquiry in a short time it was an act of efficiency and it was not the case of victimisation. The representative of the workman has not assailed the enquiry report on merits which is based on the *ex parte* evidence recorded during the enquiry. In view of the above discussions, I find that a fair and proper enquiry was conducted. It is contended that the workman has been victimised due to his union activities and hence the order of dismissal is illegal and unjustified. This contention of the authorised representative of the workman has no force. The workman did not participate in the enquiry. The enquiry was fair and proper.

Issue No. II:

There were serious charges against the workman that the claimant sabotaged machinery and electric connection, instigated other workmen to stop work and indulge in subversive activities in the factory premises. The representative of the workman has no dispute that the above facts if proved amount to gross misconduct. The workman had no right to stop other workmen from working. The Workman has no right to sabotage machinery and electric connection. If such activities were allowed, industrial peace will be no more and production will suffer and hence such activities cannot be allowed in the factory premises. It has been held by the Hon'ble Supreme Court in *East India Hotels versus their workmen*, 1984 LIC page 532 that when a domestic enquiry is

proper, Tribunal has no jurisdiction to set aside the judgement or decision of the employer as an appellate body. Interference is justified only when the enquiry is not fair and proper and the management is guilty of unfair labour practice. It has been held in D.D.Cement Ltd. versus Murari Lal, 1971-LIC page 2 ; that workman blowing whistle at the instance of the other workman leading to stoppage of work in the factory: Such act of in-discipline cannot be tolerated by an employer." In the present case the enquiry was fair and proper and the workman was not victimised and it cannot be said un-fair labour practice. The conduct of the workman amounts to gross misconduct which cannot be tolerated by the employer. Hence he cannot be reinstated. I, therefore, find that the order of termination is legal and justified. He is not entitled to any relief. The award is given accordingly.

Dated the 27th September, 1985.

R.N. SINGAL,

Presiding Officer,
Labour Court, Faridabad.

Endst No. 3379, dated the 5th November, 1985.

Forwarded (four copies) to the Commissioner and Secretary to Government, Haryana, Labour and Employment Department, Chandigarh as required under Section 15 of the I.D. Act.

R.N. SINGAL,

Presiding Officer,
Labour Court, Faridabad.

The 8th November, 1985

No. 9/5/84-6Lab./9212.—In pursuance of the provisions of Section 17 of the Industrial Disputes Act, 1947 (Central Act No. XIV of 1947), the Governor of Haryana is pleased to publish the following award of Presiding Officer, Labour Court, Rohtak in respect of the dispute between the Workman and the management of M/s Rajdhani Textile, M-6, Industrial Area, Sonepat:—

BEFORE SHRI B.P. JINDAL, PRESIDING OFFICER, LABOUR COURT, ROHTAK

Reference No. 15 of 83

between

SHRI RAGHUBIR SINGH, WORKMAN AND THE MANAGEMENT OF M/S RAJDHANI
TEXTILE M-6, INDUSTRIAL AREA, SONEPAT

Present:—

Shri Bahadur Yadav, A.R. for the workman.

None for the respondent.

AWARD

1. In exercise of the powers conferred by clause (c) of sub-section (1) of section 10 of the Industrial Disputes Act, 1947, the Governor of Haryana referred the following dispute, between the workman Shri Raghubir Singh and the management of M/s Rajdhani Textile, M-6, Industrial Area, Sonepat to this Court, for adjudication,—*vide* Haryana Government Gazette Notification No. ID/SPT/25/83/10563—68, dated 3rd March, 1983 :—

Whether the termination of service of Shri Raghubir Singh was justified and in order ? If not, to what relief is he entitled ?

2. On receipt of the order of reference, notices were issued to the parties. The workman appeared but the respondent did not, because notices sent on the address given on the order of reference were received back undelivered. The workman failed to furnish any correct address of the respondent.

3. Otherwise the case of the workman is that he was employed with the respondent since 22nd September, 1978 as a Bundlespressman on piece rate basis and used to earn about Rs. 500/- P. M. as wages. But the respondent choose to terminate his services unlawfully with effect from 4th October, 1982 in flagrant disregard of the provisions of the Industrial Disputes Act, 1947.

4. As already observed the respondent could not be served inspite of best efforts on the address given in the order of reference and the workman failed to file correct address of the respondent. So, his learned Authorised Representative Shri Bahadur Yadav made a statement in the Court today that the workman is not coming forth to prosecute the reference and as such, the same is dismissed for non-prosecution and answered accordingly. There is no order as to cost.

Dated 4th September, 1985.

B. P. JINDAL,
Presiding Officer,
Labour Court, Rohtak,
Camp Court, Sonepat.

Endst. No. 15-83/1633, dated the 11th October, 1985.

Forwarded (four copies) to the Secretary to Government, Haryana, Labour & Employment Departments, Chandigarh, as required under section 15 of the Industrial Disputes Act, 1947.

B. P. JINDAL,

Presiding Officer,
Labour Court, Rohtak
Camp Court, Sonepat.

The 9th December, 1985.

No. 9/5/84-6Lab./10092.—In pursuance of the provisions of Section 17 of the Industrial Disputes Act, 1947 (Central Act No. XIV of 1947), the Governor of Haryana is pleased to publish the following award of Presiding Officer, Labour Court, Faridabad in respect of the dispute between the workman and the management of M/s K.G. Khosla Compressure Ltd., 10/8, Mathura Road, Faridabad.

IN THE COURT OF SHRI R. N. SINGAL, PRESIDING OFFICER, LABOUR COURT FARIDABAD.

Reference No. 299 of 84

between

SHRI BRIJESH KUMAR SAINI, WORKMAN AND THE RESPONDENT MANAGEMENT OF M/S K. G. KHOSLA COMPRESSURE LTD., 10/8, MATHURA ROAD, FARIDABAD.

Present :—

Shri Manohar Lal, for the workmen.

Shri J. S. Saroha and Shri P. N. Dewedi, for respondent management.

AWARD

This industrial dispute between the workman Shri Brijesh Kumar Saini and the respondent

management of M/s K. G. Khosla Compressure Ltd., 10/8, K. M. Mathura Road, Faridabad, has been referred to this Court by the hon'ble Governor of Haryana, vide his order No. ID/FD/120-84/30641-46, dated 14th August, 1984, under Section 10(i)(c) of the Industrial Disputes Act, 1947 for adjudication. The terms of the reference are :—

Whether the termination of services of Shri Brijesh Kumar was justified and in order ? If not, to what relief is he entitled ?

According to the demand notice, the claimant was appointed with the respondent as fitter for the last five years. Previous union of workmen was in collusion with the respondent management. Hence the workers formed a separate union of all K. G. Khosla Employees Union. The claimant was active member of the union. When this new union demanded a meeting for solution of problems out of vengeance the management suspended the workman on 2nd February, 1984. A false chargesheet was issued on 14th February, 1984. It was replied by the workman on 16th February, 1984. The management appointed Shri A. K. Seth as enquiry officer. The enquiry officer conducted the enquiry in the Management House, Lodhi Road, Delhi. The workman gave a letter not to hold the enquiry in this house but the management did not look

after it. Proceedings of the enquiry were not given to the workman. Without any clarification, the workman was terminated in illegal manner. Rules of natural justice were not complied with. The workman was victimised due to trade union activities. The workman prayd reinstatement with continuity of service and with full back wages.

The claim of the workman has been contested by the management. It is contended that the claimant was chargesheeted for instigating, organising illegal strik, gherao, sabotaging machinery, abusing and threatening officers, etc. The workman was held guilty in the enquiry and hence he was dismissed. It is admitted that the workman joined the respondent on 30th August, 1979. His explaination was duly considered but it was not found satisfactory. Hence Shri A. K. Seth was appointed as Enquiry Officer. The enquiry officer offered all reasonable facilities as provided under the Certified Standing Orders. Inspite of receipt of notice of enquiry the claimant did not participate in the enquiry. Hence the enquiry had to be conducted exparte. The claimant was found guilty of the charges levelled against him. It is denied that he has been victimised for his union activities. It is further alleged that the management has good industrial relations with the employees and valid settlement was entered into with the workmen representatives. An independent person was appointed as Enquiry Officer. Various adjournments were given. He was allowed to be represented by any co-workman of his choice. But the workman did not participate in the enquiry inspite of due notices. The enquiry officer was left with no choice except to proceed exparte. The enquiry report was based on the evidence recorded during the enquiry. Objection is taken that the workman is gainfully employed. Hence it is prayed that the award be given against the workman.

Rejoinder has been filed in which the workman refuted the averments mentioned in the written statement. The reference was contested on the following issues:—

- (1) Whether the domestic enquiry is fair and proper ?
- (2) Whether the claimant is gainfully employed ?
- (3) As per reference ?

I have heard the representatives of both the parties and gone through the evidence on record. I have also gone through the statement of Shri

R. C. Batra and Shri A. K. Seth and also statement of the workman, who has appeared as WW-1 and have gone through the enquiry file and evidence recorded therein. My findings on the above issues seriatim are as follows :—

ISSUE NO. 1 :

The first objection of the workman is that he was not allowed to be represented by a person of his choice. He had requested the management to be represented through Shri R. D. Yadav, Legal Secretary and Shri Nagar Singh Advocate, office bearers of Hind Mazdoor Sabha. Hence they were denied the opportunity to defend themselves. This contention of the workman has been contested by the authorised representative of the management. It is contended that under rule 21-A of the Standing Orders Ex. M-22, the workman had the right to be represented by a co-workman of his choice. The relevant portion reads as follows :—

"During the Course of such enquiry proceedings the workman shall have the right to get assistance of any co-worker of his own choice of this establishment. Duly signed copy of the proceedings of the enquiry will be made available to the workmen ordinarily every day after such enquiry."

There is no negative provision in the rules that the workman will not be allowed to be represented by a legal practitioner and legally trained mind. Hence the representative of the workman has contended that the workman should have been allowed to be represented by Shri R. D. Yadav and Shri Nagar Singh, Advocate. He has relied on the judgement of Hon'ble Supreme Court in the Board of Trustee vs. Dalip Kumar AIR-1983-page 109. In the case cited above the workman was not allowed to be represented by a legal practitioner, whereas the management appointed two legal advisers as Presenting Officers. Under rule 12(a) the employee may take the assistance of any other employee or if the employee is Class III or IV Employee of an office bearer as defined in clause (d) of Section 2 of the Trade Unions Act, 1926 of the union to which he belongs to present the case on his behalf, but may not engage a legal practitioner for the purpose unless the said Presenting Officer appointed by the disciplinary authority is a legal practitioner or the disciplinary authority, having regard to the circumstances of the case, so permits."

In view of the above discussion, it was held that the employer was represented by two legally trained minds. Hence the workman was denied fair opportunity to defend himself as he was not allowed to engage a legal practitioner.

The following paragraph No. 11 of the above said judgment is relevant to the facts of the present case :—

"We are faced with the situation where when the enquiry commenced, the rules neither provided for permitting the delinquent employee to be represented by an advocate nor an embargo was placed on such appearance. The rules were silent on this point. But the Chairman of the appellant while rejecting the request of the first respondent seeking permission to appear through a legal practitioner simultaneously appointed M/s R. K. Shetty and A. B. Chaudhary, Legal Advisor and Junior Assistant Legal Advisor respectively in the employment of the appellant as Presenting-cum-Prosecuting Officers. What does this signify ? The normal inference is that according to the Chairman of the appellant the issue that would arise in the enquiry were such complex issues involving intricate legal propositions that the Enquiry Officer would need the assistance of Presenting-cum-Prosecuting Officers. And look at the array of law officers of the appellant appointed for this purpose. Now examine the approach of the chairman. While he directed two of his law officers to conduct the enquiry as prosecutors, he simultaneously proceeds to deny such legal representation to the delinquent employee, when he declined the permission to the first respondent to appear through a legal practitioner. Does this disclose a fair attitude or fair play in action ? Can one imagine how the scales were weighted and they tilted in favour of the Prosecuting Officer. In this enquiry the employer would be represented by two legally trained minds at the cost of

the port trust while the first respondent was asked either to defend for himself in person or have the assistance of another employee such as Nadkarini who is not shown to be a legally trained person but the delinquent employee cannot engage legal practitioner at his cost."

It was further held that :—

Apart from general propositions, in the facts of this case, this enquiry would be a one sided enquiry weighted against the delinquent officer and would result in denial of reasonable opportunity to defend himself."

The facts of the present case are different. In this case the management was represented by Shri S. K. Gogia, an Engineer of the respondent. He was not a legally trained person. Hence the management was also not represented by a legally trained person. Hence the workman could also not be allowed to be represented by a legal practitioner or a legal trained person. No rule or natural justice was flouted if the workman was not allowed to be represented by legally trained minds. It is further contended that the enquiry officer was an advocate. Hence the workman should be allowed to be represented by an advocate. He has not been able to give citation in support of his contention. That if the enquiry officer is a legally trained person in this case the workman could be represented by a legally trained person. The certified standing order of the company has the force of law. There is no provision for allowing the workman to be represented by a legally trained person. The management was not represented by a legally trained person. Hence no injustice was done with the workman.

The second contention of the representative of the workman is that the place of enquiry was fixed at Management house, Lodhi Road, Delhi and the workman had written that there was danger to his life and enquiry be fixed in the factory premises at Faridabad. It is alleged that the respondent factory is situated in Haryana near Delhi. The place of enquiry is about 10/15 K.M. from the factory and the management allowed to and fro bus fare to the workman and his representative and these facts are not disputed. Hence it cannot be said that the enquiry could not be held at management house, Lodhi Road, Delhi, when the situation in the

factory was tense. There is no ground to believe that the workman apprehended danger to his life while going and coming to the place of enquiry, rather if the enquiry is held at place other than the factory it is a circumstance which is favourable to the workman. It has been held by the Hon'ble Supreme Court in judgment of Board of Trustees cited above that one has to consider the nature of enquiry, who held it, where it is held and what is the atmosphere? Domestic enquiry is claimed to be a managerial function. A man of the establishment dons the robe of a judge. It is held in the establishment office or a part of it. Can it even be compared to the adjudication by an impartial arbitrator or a court presided over by an unbiased judge? If the present case both the circumstances were favourable to the workman. The enquiry officer was not a man of the management, the enquiry was held in the place other than the factory. Hence the atmosphere was more favourable, but the workman was adamant not to participate in the enquiry, which shows his hostile attitude and adamant behaviour. Had he attended the enquiry proceedings and faced difficulties he would have placed these before the enquiry officer and if these objections would not have been meted out by the enquiry officer, only then it could be said that the enquiry was not held in proper atmosphere and no opportunity was given to the workman. By absenting from the proceedings he showed that his behaviour was non-cooperative and defiant. In Lakshman Shastri versus State of Bihar; 1969-I-LLJ-page 444, the enquiry was held in a school about 8 miles away from the spot. It was held that rules of natural justice does not require that the enquiry against a person should be held on the spot. In these circumstances, I find that by fixing the place of enquiry at Delhi it cannot be said that any prejudice was caused to the workman.

Next contention of the authorised representative of the workman is that an advocate was appointed an enquiry officer, it has prejudiced the workman. It has been held by the Supreme Court in D.D. Cement versus Murari Lal, 1971 LIC-page 2; S.C. that merely because the enquiry officer was a junior advocate and that he had on occasions been engaged by the management he would not be necessarily biased against the workman. In the present case even there is no evidence that Shri A. K. Seth has been engaged by the management on certain occasions. Hence the appointment of the enquiry officer could not

be said to the circumstances un favourable to the delinquent workman.

Next contention of the representative of the workman is that the workman has been victimised due to his union activities. It has been held by the Hon'ble Supreme Court in Bharat Iron Works *versus* Bhaghu, Bhai, and others; 1976 LIC page 5 that the victimisation is a serious charge by employee against employer which must be properly and adequately pleaded giving all particulars. The fact that there is a union and legitimate trade union activities and employee is a member of trade union or active office bearer, is not sufficient to establish victimisation." In the present case, there is no evidence that the workman has been victimised due to his union activities. It is contended that the workman was proceeded ex parte and the enquiry was concluded in a short time. It shows that he was victimised. It is admitted that the workman was duly informed the date of enquiry. He did not appear. Hence he was rightly proceeded ex parte. It is held by the Hon'ble Supreme Court in Brook Bond Company India Ltd. *versus* S. Subrahman; 1961-II-LLJ-page 417 that where the workman insist that they must be allowed to be represented by their counsel and on the refusal of the same they boycotted the enquiry. Such enquiry could be held ex parte. So in the present case the claimant boycotted the enquiry and he was rightly proceeded against ex parte. If the enquiry officer concluded the enquiry in a short time it was an act of efficiency and it was not the case of victimisation. The representative of the workman has not assailed the enquiry report on merits which is based on the ex parte evidence recorded during the enquiry. In view of the above discussions I find that a fair and proper enquiry was conducted. It is contended that the workman has been victimised due to his union activities and hence the order of dismissal is illegal and unjustified. This contention of authorised representative of the workman has no force. The workman did not participate in the enquiry. The enquiry was fair and proper.

ISSUE NO 2 :

There were serious charges against the workman that he sabotaged machinery and electric connection, instigated other workman to stop work and indulge in subversive activities in the factory premises. The representative of the workman has no dispute that the above

facts if proved amount to gross misconduct. The workman had no right to stop other workman from working. The workman had no right to sabotage machinery and electric connection. If such activities were allowed, industrial peace will be no more and production will suffer and hence such activities cannot be allowed in the factory premises. It has been held by the Hon'ble Supreme Court in East India Hotels *versus* Their workman; 1974-LIC page 532 that when a domestic enquiry is proper, Tribunal has no jurisdiction to set aside the judgment or decision of the employer as an appellate body. Interference is justified only when the enquiry is not fair and proper and the management is guilty of unfair labour practice. It has been held in D.D. Cement Ltd. *versus* Murari Lal 1971-LIC page 2, that workman blowing whistle at the instance of the other workman leading to stoppage of work in the factory. Such act of indiscipline cannot be tolerated by an employer." In the present case the enquiry was fair and proper and the workman was not victimised and it cannot be said unfair labour practice. The conduct of the workman amounts to gross misconduct which cannot be tolerated by the

employer. Hence he cannot be reinstated. I, therefore, find that order of termination is legal and justified. He is not entitled to any relief. The award is given accordingly.

Dated 27th September, 1985.

R. N. SINGAL,
Presiding Officer,
Labour Court, Faridabad.

Endorsement No. 3378, dated 5th November, 1985.

Forwarded (four copies, to the Commissioner and Secretary to Government, Haryana, Labour and Employment Department, Chandigarh, as required under section 15 of the Industrial Disputes Act.

R. N. SINGAL,
Presiding Officer,
Labour Court, Faridabad.

KULWANT SINGH,
Secretary to Government, Haryana,
Labour and Employment Department.

श्रम विभाग

दिनांक 18 दिसम्बर, 1985.

सं. श्रो. वि./एफ०डी०/276-85/51014.—चूंकि हरियाणा के राज्यपाल की राय है कि मैं चेम कार्ब इण्डिया एस० बी० आर० सिधानिया कैमिकल इण्डस्ट्रीज, 14 माईलस्टोन, मथुरा रोड, फरीदाबाद, के अधिक श्री पूरन बहादुर तथा उसके प्रबन्धकों के मध्य इसमें इसके बाद लिखित मामले में कोई श्रौद्धोगिक विवाद है;

और चूंकि हरियाणा के राज्यपाल विवाद को न्यायनिर्णय हेतु निर्दिष्ट करना बांछनीय समझते हैं;

इसलिए, अब, श्रौद्धोगिक विवाद प्रविनियम, 1947, की धारा 10 की उपधारा (1) के अन्तर्गत (ग) द्वारा प्रदान की गई शक्तियों का प्रयोग करते हुये हरियाणा के राज्यपाल इसके द्वारा सरकारी अधिसूचना सं. 5415-3-धम-68/15254, दिनांक 20 जून, 1968, के साथ पढ़ते हुये प्रधिसूचना सं. 11495-धी-धम-57/11245, दिनांक 7 फरवरी, 1968, द्वारा उक्त अधिनियम की धारा 7 के अधीन गठित अम न्यायालय, फरीदाबाद, को विवादप्रस्त या उससे सुसंगत या उससे संबंधित नीचे लिखा मामला न्यायनिर्णय एवं पंचाट तीन मास में देने हेतु निर्दिष्ट करते हैं, जोकि उक्त प्रबन्धकों तथा अधिक के बीच या तो विवादप्रस्त मामला है या विवाद से सुसंगत अथवा सम्बन्धित मामला है:—

क्या श्री पूरन बहादुर की सेवाओं का समापन न्यायोचित तथा लौक है? यदि नहीं, तो वह किस राहत का हकदार है?

सं. श्रो. वि./एफ०डी०/130-85/51020.—चूंकि हरियाणा के राज्यपाल की राय है कि मैं गैडर टूल्ज इण्डिया प्रा० लि० यूनिट नं० 1, फरीदाबाद, के अधिक श्री भूपिंद्र सिंह तथा उसके प्रबन्धकों के मध्य इसमें इसके बाद लिखित मामले में कोई श्रौद्धोगिक विवाद है;

और चूंकि हरियाणा के राज्यपाल विवाद को न्यायनिर्णय हेतु निर्दिष्ट करना बांछनीय समझते हैं;

इसलिए, अब, श्रीद्योगिक, विवाद अधिनियम 1947, की धारा 10 की उपधारा (1) के खण्ड (ग) द्वारा प्रदान की गई शक्तियों का प्रयोग करते हुए हरियाणा के राज्यपाल इसके द्वारा सरकारी अधिसूचना सं० 5415-3-श्रम-68/15254, दिनांक 20 जून, 1968, के साथ पढ़ते हुए अधिसूचना सं० 11495-जी-श्रम-57/11245, दिनांक 7 फरवरी, 1958, द्वारा उक्त अधिनियम की धारा 7 के अधीन गठित श्रम न्यायालय, फरीदाबाद, को विवादग्रस्त या उससे सुसंगत या उससे सम्बन्धित नीचे लिखा मामला न्यायनिर्णय एवं पंचाट तीन मास में देने हेतु निर्दिष्ट करते हैं जो कि उक्त प्रबन्धकों तथा श्रमिक के बीच या तो विवादग्रस्त मामला है या विवाद से सुसंगत अथवा सम्बन्धित मामला है :—

क्या श्री भूपिन्द्र सिंह की सेवाओं का समापन न्यायोचित तथा ठीक है? यदि नहीं, तो वह किस राहत का हकदार है?

सं. श्रो. वि./एफ.डी./126-85/51026.—चूंकि हरियाणा के राज्यपाल की राय है कि मैं सुपर स्टील्स, सेंटर 6, फरीदाबाद, के श्रमिक श्री राम आसरे तथा उन्हें प्रबन्धकों के मध्य इसमें इसके बाद लिखित मामले में कोई श्रीद्योगिक विवाद है;

और चूंकि हरियाणा के राज्यपाल विवाद को न्यायनिर्णय हेतु निर्दिष्ट करता वांछनीय समझते हैं;

इसलिए, अब, श्रीद्योगिक विवाद अधिनियम, 1947, की धारा 10 की उपधारा (1) के खण्ड (ग) द्वारा प्रदान की गई शक्तियों का प्रयोग करते हुए हरियाणा के राज्यपाल इसके द्वारा सरकारी अधिसूचना सं० 5415-3-श्रम-68/15254, दिनांक 20 जून, 1968, के साथ पढ़ते हुए अधिसूचना सं० 11495-जी-श्रम-57/11245, दिनांक 7 फरवरी, 1958, द्वारा उक्त अधिनियम की धारा 7 के अधीन गठित श्रम न्यायालय, फरीदाबाद, को विवादग्रस्त या उससे सुसंगत या उससे सम्बन्धित नीचे लिखा मामला न्यायनिर्णय एवं पंचाट तीन मास में देने हेतु निर्दिष्ट करते हैं जोकि उक्त प्रबन्धकों तथा श्रमिक के बीच या तो विवादग्रस्त मामला है या विवाद से सुसंगत अथवा सम्बन्धित मामला है :—

क्या श्री राम आसरे की सेवाओं का समापन न्यायोचित तथा ठीक है? यदि नहीं, तो वह किस राहत का हकदार है?

सं. श्रो. वि./एफ.डी./194-85/51032.—चूंकि हरियाणा के राज्यपाल की राय है कि मैं सुपरमानी पैकेजिंग एण्ड ग्रिन्ट्स, 1-ई/3-ए, फरीदाबाद, के श्रमिक श्री गोरख नाथ यादव तथा उसके प्रबन्धकों के मध्य/इसमें इसके बाद लिखित मामले में कोई श्रीद्योगिक विवाद है;

और चूंकि हरियाणा के राज्यपाल विवाद को न्यायनिर्णय हेतु निर्दिष्ट करता वांछनीय समझते हैं;

इसलिए, अब, श्रीद्योगिक विवाद अधिनियम, 1947, की धारा 10 की उपधारा (1) के खण्ड (ग) द्वारा प्रदान की गई शक्तियों का प्रयोग करते हुए हरियाणा के राज्यपाल इसके द्वारा सरकारी अधिसूचना सं० 5415-3-श्रम-68/15254, दिनांक 20 जून, 1968, के साथ पढ़ते हुए अधिसूचना सं० 11495-जी-श्रम-57/11245, दिनांक 7 फरवरी, 1958, द्वारा उक्त अधिनियम की धारा 7 के अधीन गठित श्रम न्यायालय, फरीदाबाद, को विवादग्रस्त या उससे सुसंगत या उससे संबन्धित नीचे लिखा मामला न्यायनिर्णय एवं पंचाट तीन मास में देने हेतु निर्दिष्ट करते हैं जोकि उक्त प्रबन्धकों तथा श्रमिक के बीच या तो विवादग्रस्त मामला है या विवाद से सुसंगत अथवा संबन्धित मामला है :—

क्या श्री गोरख नाथ यादव की सेवाओं का समापन न्यायोचित तथा ठीक है? यदि नहीं, तो वह किस राहत का हकदार है?

सं. श्रो. वि./एफ.डी./211-85/51038.—चूंकि हरियाणा के राज्यपाल की राय है कि मैं डी.पी.ओ. इण्डस्ट्रीज, 228/24, फरीदाबाद, के श्रमिक श्री रमेश चन्द्र शर्मा तथा उसके प्रबन्धकों के मध्य में इसके बाद लिखित मामले में कोई श्रीद्योगिक विवाद है;

और चूंकि हरियाणा के राज्यपाल विवाद को न्यायनिर्णय हेतु निर्दिष्ट करता वांछनीय समझते हैं;

इसलिए, अब, श्रीद्योगिक विवाद अधिनियम, 1947, की धारा 10 की उपधारा (1) के खण्ड (ग) द्वारा प्रदान की गई शक्तियों का प्रयोग करते हुए, हरियाणा के राज्यपाल इसके द्वारा सरकारी अधिसूचना सं० 5415-3-श्रम-68/15254, दिनांक 20 जून, 1968, के साथ पढ़ते हुए अधिसूचना सं० 11495-जी-श्रम-57/11245, दिनांक 7 फरवरी, 1958, द्वारा उक्त अधिनियम की धारा 7 के अधीन गठित श्रम न्यायालय, फरीदाबाद, को विवादग्रस्त या उससे सुसंगत या उससे संबन्धित नीचे लिखा मामला न्यायनिर्णय एवं पंचाट तीन मास में देने हेतु निर्दिष्ट करते हैं जोकि उक्त प्रबन्धकों तथा श्रमिक के बीच या तो विवादग्रस्त मामला है या विवाद से सुसंगत अथवा संबन्धित मामला है :—

क्या श्री रमेश चन्द्र शर्मा की सेवाओं का समापन न्यायोचित तथा ठीक है? यदि नहीं, तो वह किस राहत का हकदार है?